IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.10.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.2117 of 2004

H.Selai Gowder (since deceased)
1.S.Susendran
2.Tmt.Lakshmi
3.Tmt.Meena
4.Tmt.Sharmila
5.Tmt.Parimala
6.Tmt.Sujji

.. Petitioners

vs.

1.Tmt.Kannammal
2.Tmt.Sundariammal
3.Tmt.Rukkumani
4.Tmt.Subbiammal
5.Halliammal
6.Tmt.Lakshmi
7.Tmt.Shanthi
8.Tmt.Sumathi
9.Tmt.Jayanthi

.. Respondents

Revision Petition filed under Article 227 of the Constitution of India against the order dated 26.8.2003, made in I.A.No.199/2003 in O.S.No.194/1996, on the file of the District Munsif Court, Kotagiri, The Nilgiris now renumbered as O.S.No.14/2004 on the file of the Sub-Court, Udhagamandalam, The Nilgiris.

For Petitioners : Mr.R.Sivakumar
For Respondents : No Appearance

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ORDER:

This Revision Petition has been filed against the order dated 26.8.2003, made in I.A.No.199/2003 in O.S.No.194/1996, on the file of the District Munsif Court, Kottagiri, The Nilgiris now renumbered as O.S.No.14/2004 on the file of the Sub-Judge, Udhagamandalam, The Nilgiris.

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2. The defendants in O.S.No.194/1996 are the revision petitioners before this court. Originally, a suit was filed by the respondents herein in O.S.No.194/1996 on the file of the District Munsif Court, Kottagiri for declaration declaring the title of the plaintiffs in respect of the suit properties and also for delivery of possession. In the suit in I.A.No.211/1998 an advocate-commissioner was appointed and he filed a report on 12.3.2003 after inspecting the suit schedule property to find out the number of trees cut down, when it was cut and the value of the trees that were cut down.

3.Thereafter the respondents/plaintiffs filed I.A.No.199/2003 under Order 6 Rule 17 CPC to amend the plaint by deleting the existing para 10 of the plaint by substituting the following as para 10:

> "10. The plaintiffs humbly submit that the alleged Revocation Deed dated Ist December 1995 registered as Doct.No.1584/1995 at the Office of the Sub Registrar, Kotagiri is a null and void document in as much as late Senniammal had no rights whatsoever to cancel and or revoke the registered Gift Deed dated 25th August 1995 executed by her out of her own volition and free will in favour of the plaintiffs. It is pertinent to point out that a perusal of the registered Gift Deed dated 25.8.95 would go to show that Senniammal had not retained any power in her to cancel or revoke the said Gift Deed at any point of time. The plaintiffs also further state that it is only on (End of the Ist page in the Original) account of the coercion, undue influence and threats administered by the Defendants 1 and 3 the late Senniammal was forced to execute the alleged Revocation Deed dated 1.12.95 and against her will."

The plaintiffs wanted to add two new paragraphs also touching upon the trees cut down and the value of the trees as per the report of the advocate-commissioner. The plaintiffs wanted to amend the plaint by adding that the revision petitioners are liable to pay damages for the trees cut and accordingly they wanted to amend the court fee para in the plaint.

4.The trial court by order dated 26.8.2003 allowed I.A.No.199/2003 and aggrieved by the same, the defendants have filed the above Civil Revision Petition under Article 227 of the Constitution of India.

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5. Heard the learned counsel for the revision petitioners. Though notice has been sent to the respondents, there was no representation on their behalf.

6. Learned counsel for the revision petitioners submitted that by way of the amendment now, the nature of the suit itself has been changed and there is not even a single averment in the affidavit filed in support of I.A.No.199/2003 as to why they wanted to substitute the para 10 with the new para as stated in the petition.

7. I find force in the submissions of the learned counsel that no reasons at all given in the affidavit by the respondents herein for substituting para 10. What is stated in the affidavit is that the advocate-commissioner valued the tree cut by defendants 1 and 2 at Rs.12,58,862/- and therefore it becomes necessary for them to amend the plaint by seeking the relief of damages. On that basis only the amendment petition has been filed and there is not even a whisper in the affidavit as to why they wanted to substitute para 10. The trial court has failed to advert to this fact and has wrongly allowed the amendment petition for substituting para 10. Therefore, the trial court's order insofar as permitting the respondents herein to substitute para 10 is liable to be set aside and accordingly set aside.

8. Insofar as the amendments sought for by the respondents herein on the basis of the advocate-commissioner's report is concerned, I do not think that these amendments would alter the nature and character of the suit and it does not introduce a new case also. The report of the advocate commissioner was received on 12.3.2003 and based on that report the amendment petition has been filed as the respondents wanted to introduce a prayer for damages. Whether the respondents are entitled to damages or not and whether the claim is stale or not, to be gone into at the time of trial. Therefore there is nothing wrong in the trial court order permitting the respondents to amend the plaint in this regard.

9. In the result, the C.R.P. is partly allowed and the trial court order is modified to the effect that insofar as substituting the existing para 10 by way of amendment is not to be permitted and the amendment with regard to the other claims will have to be permitted. No costs. C.M.P.No.20243/2004 is closed.

sd/-
Asst.Registrar(Crl side)

/truecopy/

sub Asst.Registrar

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Index :yes/no
Internet:yes/no
sks

To

1.The District Munsif, Kotagiri.

2.The Sub-Judge, Udhagamandalam.

+1 C.C to Mr.R.sivakumar, Advocate SR 50727

MM (CO)

Pre-delivery order,
C.R.P.(PD)2117/04.

EM(30.11.2006)

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